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the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Tenth periodic report of States parties due in 1998

Addendum

Republic of Korea*

[12 January 1998]

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* This document contains the ninth and tenth periodic reports, submitted in one document, due on 4 January 1996 and 1998, respectively. For the eighth periodic report of the Republic of Korea and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/258/Add.2 and CERD/C/SR.1159, 1160.

The annex to the report submitted by the Government of the Republic of Korea may be consulted in the Secretariat's files.

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Introduction

1. In accordance with article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as "the Convention"), the Republic of Korea (hereinafter referred to as "Korea") submits to the Committee on the Elimination of Racial Discrimination (hereinafter referred to as "the Committee") its tenth periodic report on the implementation of the Convention.

2. The present report deals mainly with new developments since the submission of the eighth periodic report (CERD/C/258/Add.2) of 31 October 1995, in light of the discussion held during consideration by the Committee of the eighth periodic report in August 1996 as well as its concluding observations.

3. The information contained in this report is set out in accordance with the revised general guidelines concerning the form and contents of reports by States Parties (CERD/C/70/Rev.3).

PART I. GENERAL

4. The Government of the Republic of Korea (hereinafter referred to as "the Government") has undertaken a variety of measures to promote democratization and human rights. In line with these efforts, and in recognition of human rights as a significant part of its major foreign policy objectives, the Government has actively participated in international endeavours to improve human rights under the astute leadership of the United Nations. Such foreign policy stems from the Government's ongoing campaign of "Segyewha", or "globalization". The policy aims to enhance, along with other various policy areas, human rights in Korea, in an effort to meet both international standards and increasing global expectations. At the same time, it requires the heightened sense of community with all mankind, as the scope of the Government's interests expands from mainly national considerations to include such internationally poignant issues as human rights, the environment, refugees, poverty, and global security.

5. The Constitution of Korea (hereinafter referred to as "the Constitution") recognizes as the supreme principles of the State, the precepts of fundamental human rights based on respect for human dignity, the worth of the individual, and equality of individuals before the law. These constitutional principles are strictly and consistently incorporated into all national legislation as well as into the political, economic, social, cultural and other fields of public life in the Republic of Korea.

6. Article 6, paragraph 1, of the Constitution provides that "treaties duly concluded and promulgated under the Constitution and the generally recognized rules of international law shall have the same effect as the domestic laws of the Republic of Korea". While the Constitution does not make specific reference to racial discrimination due to the homogeneity of the Korean people, the subject is covered in a comprehensive manner by article 37 (1) of the Constitution, which states that the "freedoms and rights of citizens shall not be neglected on the grounds that they are not enumerated in the Constitution".

13. The principle of guaranteed fundamental human rights and the principle of equality of individuals before the law, as enshrined in the Constitution, also apply to aliens, including stateless persons, who reside in Korea. For the Committee's reference, the full text of the Constitution is attached at the end of the present report.

PART II. INFORMATION IN RELATION TO ARTICLES 2 TO 7

Article 2

14. During the period under consideration, no specific law has been enacted which has a bearing on the Convention. Korea, however, firmly believes that, as already explained in Part I, the existing legislation and practices are sufficient for a complete implementation of the Convention. On this note, Korea would like to emphasize again that the Convention has been considered as a part of domestic law. Nevertheless, the Government will continue to pay close attention to this matter to ensure more effective implementation of the Convention.

15. Furthermore, Korea's accession to the six major international human rights instruments clearly demonstrates its willingness to promote universal respect and strict adherence to human rights and fundamental freedoms, without distinction of any kind to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or any other status.

16. Korea submitted its initial reports on implementation of the International Covenant on Civil and Political Rights and of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which were duly considered by the Human Rights Committee in July 1992 and by the Economic, Social and Cultural Rights Committee in May 1995, respectively. Korea submitted its second report for the International Covenant on Civil and Political Rights in October 1997, and is now preparing to submit its second report on the ICESCR. The preparation and submission of these reports have provided valuable opportunities and momentous steps for the Korean Government in strengthening its commitment to uphold and promote all civil, political, economic, social and cultural rights.

17. With regard to establishing a national human rights institution, the Government is currently conducting case studies on the experiences of countries that have already established similar national human rights institutions. In this regard, the delegation of the Republic of Korea attended, as an observer, the Second Asia-Pacific Regional Workshop of National Human Rights Institutions, held on 10-12 September 1997 in New Delhi, India.

Article 3

18. As already stated in previous periodic reports, the Government appreciates the dramatic transformation of South Africa, which is now pushing to foster human rights, fundamental freedoms, and the dignity of all individuals without distinction as to race, colour, or national or ethnic

origin, and to eliminate all forms of racial discrimination under the government of President Nelson Mandela.

19. The Government of the Republic of Korea, together with the international community, has endeavoured to respond appropriately to the South African political process by lifting all sanctions. The Government believes that the complete removal of sanctions has contributed to securing a better future for South Africa.

20. Since the establishment of diplomatic relations in 1992, the volume of trade between the Republic of Korea and the Republic of South Africa has been increasing sharply, totalling US$ 2,564 million as of 1996. The Korean Government is confident that the South African case will serve as a model of complete eliminating of racial discrimination.

Article 4

21. The Constitution condemns any notion or theory of superiority of one race or an ethnic group over another and any attempt to justify or promote racial hatred and discrimination in any form. Article 11 of the Constitution stipulates as follows:

> "(1) All citizens shall be equal before the law, and there shall be no discrimination in all fields of political, economic, social or cultural life on account of sex, religion or social status.
>
> "(2) No privileged caste shall be recognized or ever established in any form."

22. These constitutional principles are reflected in a concrete and detailed manner in various domestic laws. It, therefore, reconfirms that the existing constitutional safeguards and domestic legislation are generally sufficient for complete implementation of article 4 of the Convention. For example, an act of racial discrimination can be punished under the present Korean Penal Code, according to articles 307 and 309, which concern defamation, and article 311, which deals with libel. If the situation so requires in the future, Korea will endeavour to initiate any necessary legislative measures for the effective implementation of article 4 of the Convention.

23. To further safeguard human rights, to implement article 4, and to respond to the wish expressed by the Committee during the consideration of the eighth periodic report as mentioned in Part I, the Government made its declaration under article 14 of the Convention on 3 March 1997.

Article 5

24. The Constitution, established on the principle of human dignity and values and the principle of the equality of individuals before the law, positively guarantees fundamental human rights by stipulating in detail various provisions regarding the freedom and rights of individuals in political, judicial, economic, social and cultural fields.

25. The principle of equal protection under the law is observed in all legislative, judicial and administrative acts of the State. Under articles 107 (1) and 111 (1) of the Constitution, the Constitutional Court adjudicates whether a particular law is in violation of the principle of equal protection under the law.

26. The Government has carefully examined the situation of foreign workers in Korea and subsequently bolstered institutional measures ensuring the timely payment of wages, safe remittance of money to home countries, compensation for injuries, and protection against mistreatment. The Government has also extended worker's injury compensation and necessary legal protection to undocumented foreign workers.

27. Discriminatory treatment of foreigners based on their nationalities is banned by law. Article 5 of the Labour Standards Act (Equal Treatment) states that "an employer shall not discriminate against workers on grounds of gender, or take discriminatory treatment in relation to the conditions of employment according to nationality, religion or social status".

(i) Foreign workers who are lawfully employed in Korea are entitled to enjoy their working rights as prescribed in the Labour Standards Act.

(ii) Employers who treat foreign workers discriminatively on grounds of their nationalities shall be punished with a fine not exceeding five million Korean won (art. 115 of Labour Standards Act).

28. The "Consulting Center for Foreign Workers" has been in operation since September 1994 in order to promote and protect the rights and interests of foreign workers. Three grievances with a total cash value of 13,592,000 won have been handled during the first half of 1997, along with 38 consulting services cases.

29. Article 9 of the Trade Union and Labour Relations Adjustment Act stipulates that a member of a trade union shall not be discriminated due to his/her race. In addition, Korea has no system or practices that restrict the right to establish and join a trade union because of race.

30. Foreigners working as industrial "trainees" in Korea are justly qualified to stay in the country in accordance with the Immigration Control Act. Industrial trainees are under the supervision and protection of relevant ministries on the basis of the following directives and guidelines:

(i) Guidelines on issuing visas for industrial trainees (Directives of Ministry of Justice),

(ii) Guidelines on operations of the industrial trainee system (Notifications of Small and Medium Business Administration),

(iii) Guidelines on protection and management of industrial trainees (Ordinances of Ministry of Labour).

31. In case that industrial "trainees" are paid for their labour, eight provisions of the Labour Standards Act apply to them, pursuant to the above-mentioned Ordinances of Ministry of Labour. They are also protected by the Minimum Wage Act, the Industrial Safety and Health Act, the Industrial Accident Compensation Insurance Act and the Medical Insurance Act.

Legal foreign workers in Korea (as of 31 July 1997)

Nationality	Number
U.S.A.	6 255
Canada	3 434
Japan	1 551
Philippines	1 057
China	563
Russian Federation	501
United Kingdom	493
Australia	263
Germany	245
France	187
New Zealand	84
Austria	68
South Africa	61
Ireland	39
Sweden	20
Others	1 616
Total	16 437

32. The number of identified illegal foreign workers totalled 129,054 as of the end of 1996. Protective measures on a humanitarian basis, including "liquidation of overdue payment", are in effect in accordance with the Industrial Accident Compensation Insurance Act.

(i) Even in cases where provisions of the Labour Standards Act do not apply directly, illegal foreign workers are still protected through the Industrial Accident Compensation Insurance Act, safeguarding their human rights [Guidelines on handling industrial accident compensation for illegal foreign workers (February 1995)].

(ii) For industrial accidents which took place after 8 February 1991, illegal foreign workers are entitled to apply for back compensation [Guidelines on protective measures for illegal foreign workers (September 1995)].

(iii) Illegal foreign workers are protected by accident compensation and liquidation of overdue payments in the same manner as general cases under labour related laws [Guidelines on administrative guidance for the protection of illegal foreign workers (February 1995)].

Article 6

33. The Constitution and the relevant laws of Korea assure everyone within its jurisdiction of effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination.

34. Under the relevant provisions of the laws, foreign nationals as well as Korean citizens are entitled to receive protection, remedies and compensation in case of acts of discrimination, including racial discrimination, committed by a person, a group of persons, or central and local government agencies.

35. Articles 12, 26, 27, 28 and 29 of the Constitution refer to protection and remedies for damages suffered as a result of such discrimination.

36. Other basic laws which can be invoked for the protection and remedies against racism and racial discrimination are the Civil Code, the Criminal Code, the Code of Civil Procedure, the National Compensation Act, the Administrative Litigation Procedure Act and the Criminal Compensation Act.

37. As mentioned in the eighth report, remedies available in case of an infringement of rights by government agencies are as follows:

(i) Petition: Generally, an individual who claims an infringement of his/her fundamental rights may obtain remedies by petitioning for the annulment or nullification of the administrative acts, or for the dismissal of the responsible officials under article 26 of the Constitution. Matters for which petitions are available are prescribed in article 4 of the Petition Act, and the petitioning method and procedure are prescribed in articles 6 to 8 of the said Act.

(ii) Appeals: An individual, whose rights or interests have been violated by an illegal or unjust administrative act, or by the exercise or non-exercise of government authority by administrative agencies, may use the administrative appeals procedure to achieve the proper operation of the administration (Administrative Appeals Act, art. 1).

(iii) Litigation: Article 107 (2) of the Constitution provides that the courts shall adjudicate the constitutionality or legality of

administrative acts. The details of the litigation procedure are prescribed in the Administrative Litigation Procedure Act.

(iv) Review of administrative decrees and regulations: In order to ensure that administrative decrees and regulations do not violate the fundamental rights of citizens, article 107 (2) of the Constitution provides the court with the power to review administrative decrees and regulations. The review may be conducted by the court when their constitutionality or legality is at issue in a trial. The Supreme Court has the power to make a final review.

(v) Remedies of the Constitutional Court: In case of an infringement of fundamental rights by an unconstitutional administrative act, an individual may obtain remedies through a petition to the Constitutional Court.

(vi) Compensation for damages: An individual, whose fundamental human rights have been infringed by the unlawful act of a public official in the course of his official duties, may claim compensation for damages from the State under the procedures prescribed by the National Compensation Act (Constitution, art. 29 (1)).

38. Remedies available in case of an infringement of fundamental human rights by an individual are as follows:

(i) Complaint or accusation: The person claiming an infringement of his fundamental rights by another individual is entitled to seek redress of the illegal act from the criminal investigation authorities, i.e. the prosecutor's office and the police. For example, through a complaint or accusation with respect to an unlawful detention or an infringement of property rights, an individual can initiate an investigation or prosecution of such unlawful acts. In addition to a complaint or an accusation, the law provides for procedures for requesting an adjudication (Code of Criminal Procedure, arts. 260-262).

(ii) Civil lawsuit for compensation: An individual, who claims an infringement of his fundamental rights by another person, can also file a lawsuit to seek compensation for damages.

(iii) Remedies available to the victims of a crime: The Constitution provides for State aid to the victims of a crime, by stipulating that "Citizens, who have suffered bodily injury or death due to criminal acts of others, may receive aid from the State under the conditions prescribed by law" (art. 30). The State Aid for Victims of Crime Act, promulgated on 1 July 1988, sets forth detailed means and procedures for payment of State aid.

Article 7

39. In the areas of education, culture and information, the legislation and measures adopted by the Government, expressed in the fifth to eighth reports, remain valid. With a view to promoting understanding, tolerance and friendship among nations and racial or ethnic groups, and combating racial prejudices, the Government included new subjects, as follows, in the elementary and high school curricula, as already mentioned in the eighth report.

(i) Understanding of typical characteristics of different races and ethnic groups.

(ii) Respect for human dignity regardless of race, colour, sex, religion and belief, and equal treatment of all people in all fields.

(iii) Measures and efforts to eliminate racial prejudices and discrimination.

40. Since its accession to the Convention, the Government has exerted great efforts to inform its citizens of the contents of the Convention.

41. The original text and Korean translation of 14 major international human rights treaties were reproduced and distributed in February 1994 under the title, "Collected Materials on International Human Rights Treaties". In addition, officials of all ranks engaged in human rights-related work including those of the Public Prosecutor's Office, police and correction agency are continuously educated so as to realize the ideals embodied in the Convention.

42. At the Judicial Research and Training Institute, where public prosecutorial and judiciary candidates who have passed the bar examination are trained for a period of two years before being conferred with their lawyers' license and appointed as public prosecutors or judges, "International Human Rights Law" became a part of the curriculum in 1997. Lectures are offered on the main features of the Convention and on remedies for individuals whose Convention rights were infringed.

43. Moreover, the Ministry of Justice is launching a programme to bring law closer to everyday life. An outline of the Convention is being provided at lectures and symposia. The ideals of the Convention are also being publicized when legal aid service are provided for residents of medium- and small-sized cities, as well as farming and fishing communities. Schools, the mass media and the Government play an important role in promoting human rights. They observe every first week of December as "Human Rights Week".

44. The Government organizes a Human Rights symposium every year around 10 December, the anniversary of the Universal Declaration of Human Rights. Discussions were held on "Disclosure of information and protection of human rights in modern societies" in 1991, "Environmental problems and human rights" in 1992, "Industrial accidents and human rights of the handicapped" in 1993, "Victims of crimes and human rights" in 1994, "Women and

human rights" in 1995. These symposia significantly advanced respect for the principle of human rights protection.

45. As of 31 December 1996, a total of 54 schools for foreigners had been established, in which 7,784 students were registered, meeting varying educational needs of the foreign nationals residing in Korea.

Number of schools for foreigners in the Republic of Korea

Chinese	34
American (U.S.)	16
Japanese	2
Italian	1
German	1
Total	54

46. In addition, as of 30 July 1997, a total of 366 foreign students were attending Korean primary (196), middle (100), and high schools (70) and, as of 31 May 1997, a total of 2,458 foreign students were studying at Korean universities, including graduate schools.

47. Although the total number of foreign nationals has recently been increasing in the country, the number of foreign schools has not increased at the same extent because foreign workers seldom take children with them to Korea.

48. Regarding concerns about possible discrimination against ethnic Chinese living in Korea, it is to note that there is no discrimination of them in terms of equal opportunities, including employment.

49. On the situation of children of mixed parentage in Korea, it should be noted that there has never been institutional discrimination against them. Since Korean society is a homogeneous one which places a high value on Confucian values and traditional family ethics, there is no denying that a certain degree of prejudice has existed among some people in the past. However, such attitudes have been decreasing drastically in recent years, to the growing tolerance and understanding of other cultures that has emerged from Korea's integration into the international community and its economic development.

Annex: The Constitution